

## IREMARKS

Thorough examination of the present application is appreciated.

Claims 1-38 are pending with claims 1, 10, 16, 21 and 38 being independent. The pending claims stand rejected as follows:

Claims 1-9, 32, 33, 34 and 38 stand rejected under 35 U.S.C. §103(a) as unpatentable over U.S. 5,222,615 ("Ota 615") in view of U.S. 5,092,474 ("Leigner"), U.S. 5,762,221 ("Tobias"), U.S. 6,044,997 ("Ogg"), further in view of U.S. 4,749,092 ("Sugiura"), U.S. 5,238,129 ("Ota 129"), U.S. 5,740,934 ("Brody"), U.S. 4,877,141 ("Hayashi"), U.S. 3,923,178 ("Welker"), and further in view of Wiley Encyclopedia ("Wiley").

Claims 10-20 stand rejected under 35 U.S.C. §103(a) as unpatentable over Wiley in view of U.S. 5,897,901 ("Visioli") and U.S. 5,616,353 ("Wright").

Claims 21-31 and 35-37 stand rejected under 35 U.S.C. §103(a) as unpatentable over the references as applied to claims 6-8 and further in view of applicant's admission of the prior art and Visioli and Wright.

Claims 1-9, 32, 33, 34 and 38 are patentable over Ota '615 in view of Leigner, Tobias, Ogg, further in view of Sugiura, Ota' 129, Brody, Hayashi, Welker, and further in view of Wiley.

To meet the burden of establishing a *prima facie* case, the U.S. Patent and Trademark Office must point out where each claimed element and limitation of the claims is found in the cited references. *Ex parte Blanc*, 13 USPQ2d 1383 (Bd. Pat. App. & Inter. 1989). Furthermore, to establish a *prima facie* case of obviousness, "there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings." MPEP 2143 citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). "If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the propped modification." MPEP 2143.01 citing *In re Gordon*, 733 F.2d 900, 221 USPQ. 1125 (Fed. Cir. 1983).

Applicants respectfully submit that the Office has not established a *prima facie* case of obviousness for the following reasons.

I. The cited prior art references taken either individually or in combination with one another fail to teach the structure as recited by Claim 1. In particular, Claim 1, among other limitations, recites the following:

--said body portion having panel sections provided with  
respective flat outer surfaces --

Accordingly, the four panel sections each extend between adjacent corners of the body and have respective *flat* outer surfaces. The semantics of the word “flat” means, among others, “being or characterized by a horizontal line or tracing without peaks or depressions.” *Merriam-Webster Online Dictionary*

The Examiner discussing Ota ‘615 on page 2, last paragraph of the OA, asserts that each of the panels is flexible and substantially **flat**. The Examiner is incorrect, with all due respect. Ota ‘615 explicitly teaches that each side panel, extending between adjacent corners, has a **structured** outer surface, not a flat surface, as required by Claim 1. In particular, Ota ‘615 teaches that

--adjacent collapse panels 13 are separated from each other  
by lands 14. --

Accordingly, Ota ‘615 teaches that each side panel of a body has a central depression, collapse panel 13, and a projection, spaced lands 14. In contrast, the panel sections, as claimed, are flat.

Leigner, Tobias, Ogg, Sugiura, Ota’ 129, Brody, Hayashi and Wiley, like Ota ‘615, each disclose a container configured with **structured** side panels, not **flat** as recited in Claim 1. Accordingly, these prior art references cannot remedy the deficiency of Ota ‘615.

II. One of ordinary skill in the art would not be motivated to combine Ota’ 615 and Welker. Turning now to Welker, Examiner’s attentions is directed to, for example, FIG. 1 illustrating flat side walls 32 which terminate in the bottom portion plane of container 10.

Ota ‘615 explicitly teaches that

--The support panels [6,7] compensate for unequal  
stretching of the sides of the bottom section of container,  
and are thus **particularly useful** with ... cross-sectionally  
rectangular containers-- See Ota ‘615, col. 3, lines 43-47  
(Emphasis added)

The support panels 6, 7 of Ota ‘615 each are configured as a depression provided in a bottom section which is separated from a body portion by an annular groove. In contrast to Ota ‘615, Welker discloses a container having:

no separation between the bottom and body portions, and  
the flat bottom portion.

Incorporating continuous, flat side sections of Welker in Ota '165, as suggested by the Examiner, would lead to the resultant structure that is configured **without a separating groove** between the bottom and body portions, and with a **flat** bottom portion. A container having a flat bottom portion that does not have support panels or depressions and is not separated from the rest of the container by a groove contradicts the teaching of Ota '615. Accordingly, one of ordinary skill cannot find motivation in the cited references including Ota '615 for incorporating the flat side sections of Welker. Hence, Ota '615 and Welker cannot be properly combined with one another.

Claims 2-9, 32, 33 and 34 depend upon Claims 1 either directly or indirectly and, thus, benefit from its patentability.

Independent Claim 38 recites at least some of the discussed limitations of Claim 1 and, therefore, is patentable. Withdrawal and favorable reconsideration of the 35 U.S.C. §103(a) rejection of Claims 1-9, 32-34 and 38 are in order.

Claims 10-20 are patentable under 35 U.S.C. §103(a) over Wiley in view of Visioli and Wright and applicant's admitted prior art.

"The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination." MPEP 2143.01 citing *Ex parte Mill*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

Applicant respectfully submits that the cited prior art references do not suggest the desirability of a combination used by the Examiner.

Claim 10, among other limitations, recites the following:

--a fourth layer of adhesive, a fifth layer of regrind, a sixth layer of adhesive, and a seventh layer of polyamide --

The Examiner's attention is drawn to the following table illustrating the structural differences between Claim 10 and the cited references .

Table

	Claim 10	Wiley	Visioli	Wright	Yamada	Weissenstein	Deyrup
outer layer (1)	PP	PP	not disclosed	polyolefin	resin material	evoh	polyethylene
next (2)	A	A	not disclosed	paper	A	A	A
next (3)	evoh	nylon	not disclosed	polyamide	polymer	regrind	evoh
next (4)	A	evoh	not disclosed	bynel	A	A	A
next (5)	regrind	nylon	not disclosed	polyethylene	polymer	barrier	polyethylene
next (6)	A	A	not disclosed	A	resin material	A	A
inner layer (7)	polyamide (nylon)	lonomer	polyamide	polyamide	polyolefin	Polypropylene	polyamide

wherein A is an adhesive layer.

Wiley discloses multiple seven-layer structures on p. 360. Among the disclosed structures, none has a combination of sequentially coupled adhesive, regrind and adhesive layers, as recited in claim 1. Looking at the table, it also becomes clear that none of the other cited references discloses a group including a regrind layer, which is sandwiched between two adhesive layers, and an inner polyamide layer, as recited in Claim 10. Furthermore, none of the cited prior art references teaches or suggests grouping together fourth, fifth and sixth layers which correspond to respective adhesive, regrind and adhesive layers, as recited by Claim 10. The Examiner picks and chooses various layers from the numerous cited references to show that Claim 10 is obvious based on the teaching of the present disclosure, not on the suggestion by any of the cited references. Such a practice amounts to impermissible hindsight. Accordingly, a combination of the cited references cannot render Claim 10 unpatentable.

Claims 11-15 depend from Claim 10 and, thus, benefit from its patentability.

Independent Claim 16 recites, among others, the following

--a layer of regrind adhered to said layer of ethylene-vinyl alcohol polymer, and a layer of amorphous nylon adhered to said layer of regrind, wherein said amorphous nylon layer forms the interior surface of the container --

As the table illustrates, consecutive regrind, ethylene-vinyl and amorphous nylon layers are not taught or suggested by the cited prior art. Claim 16 is patentable over the cited combination.

Claims 17-20 depend on Claim 16 and, therefore, are patentable, too. Withdrawal of 35 U.S.C. 103(a) rejection of claims 10-20 is respectfully requested.

Claims 21-31 and 35-37 are patentable over the references as applied to Claims 6-8 in view of applicant's admission of the prior art and Visioli and Wright.


Claim 21 recites at least some of the limitations discussed above in reference to independent Claims 1, 10 and 16. Since the rejections of respective Claims 1, 10 and 16 have been shown to be improper, Applicant respectfully submits that Claim 21 is also allowable. Claims 22-31 and 35-37 depend upon allowable independent Claim 21 and should be allowed, too. The withdrawal of the rejection of Claims 21-31 and 35-37 is respectfully requested.

#### Conclusion

Applicant respectfully submits that he has answered each issue raised by the Examiner and that the application is accordingly in condition for allowance. Such allowance is therefore respectfully requested.

Please charge any additional fees associated with this application to Deposit Account No. \_\_\_\_

Respectfully submitted,

By   
\_\_\_\_\_  
Yuri Kateshov  
Goodwin Procter LLP  
599 Lexington Avenue  
New York, NY 10022  
212-459-7328  
Reg. No. 34,466